FOR ARGUMENT

No. 86-5375

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CHRISTOPHER A. BURGER,

Petitioner,

v.

RALPH KEMP, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION CENTER,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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REPLY BRIEF FOR PETITIONER

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ARGUMENT

I. IN THIS CAPITAL CASE, PETITIONER WAS DENIED THE RIGHT TO CONFLICT FREE AND EFFECTIVE ASSISTANCE OF COUNSEL.

A. The Overwhelming Record Evidence Mandates A Determination By This Court That Petitioner's Trial Counsel Actively Represented Both Petitioner And A Co-Indictee With Adverse Interests.

1. There was clearly multiple representation in this case.

The thrust of the Respondent's position throughout this litigation has been based upon a misinterpretation of the record evidence. For example, the Respondent maintains that there was no multiple representation in this case. This assertion is totally contradicted by the record.[1] Leaphart and his law partner were appointed within several weeks of Petitioner's arrest to represent Burger and Stevens respectively. Leaphart testified at the evidentiary hearing that he talked with Burger and Stevens from

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[1] The District Court made no contrary finding regarding multiple representation. Even if there were a contrary finding, however, a finding of multiple representation is a mixed question of fact and law that is reviewable *de novo*. *See Cuyler* v. *Sullivan*, 446 U.S. 335 (1980). The same is true regarding the performance and prejudice components of an effective assistance of counsel inquiry. *Strickland* v. *Washington*, 446 U.S. 668, 698 (1984).

Petitioner would note, however, that the findings of fact made by the district court that are contrary to Burger's assertions are few. Petitioner's primary contention is with the legal significance that the district court attributed to the facts. The weight given certain facts by the lower court is obviously not entitled to any F.R.Civ.P. 52 deference by this Court. To the extent that any of the findings conflict with the position taken by the Petitioner in these pleadings, Petitioner maintains that the findings are clearly erroneous in light of the entire record.

the beginning.[2] He further testified that he worked on Stevens' case. FHT 15; J.A. 32. They shared their legal research and discussed the issues in both cases. FHT 18; J.A. 35. The District Attorney inquired during jury selection whether any potential juror was being or had been previously represented by either Mr. Leaphart or Mr. Smith. Tr. 28-29, 37,42,48.[3] Mr. Smith and Leaphart were at counsel table together during Burger's trial. FHT 18; J.A. 35. Leaphart prepared both Burger's and Stevens' briefs on the second appeal to the Supreme Court of Georgia. FHT 40-41; J.A. 54.[4] The district court found: "the two attorneys at times acted as one." *Burger* v. *Kemp*, 753 F.2d 930, 941 (11th Cir. 1985) J.A. 180 (Panel majority adopted District Court order as its opinion and order).[5]

2. Petitioner's interests were adverse to Stevens' interests.

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[2] Respondent's assertion that Leaphart spoke with Stevens only in his role as counsel for Burger is not correct. *See* FHT 15-16; J.A. 32; *see also*, *Burger* v. *Kemp*, 753 F.2d 930, 943 n.4 (11th Cir. 1985) (Johnson, J., dissenting) ("Leaphart consulted confidentially with Stevens"). J.A. 184

[3] The transcript of Petitoner's first trial is referenced in this brief as "Tr."; the transcript of Petitioner's second trial is referenced as "R.Tr."; the transcript of the federal evidentiary hearing is referenced as "FHT."

[4] He did not remember who did the briefs for the first appeal. FHT 40-41; J.A. 54.

[5] The District Court further found that the two attorneys made no attempt to "Chinese wall" themselves and that they worked together on both cases. *Burger*, 753 F.2d at 939; J.A. 177. Additionally, as Petitioner argued in greater detail in his principal brief, at page twenty, if one lawyer in a firm cannot represent the two clients, then it is not permissible for lawyers associated in practice to do so. *See e.g.*, ABA Standards Relating to the Administration of Criminal Justice, the Defense Function §3.5(b).

Petitioner's interests were as adverse to those of Stevens as it is possible to be in a criminal proceeding. As every reviewing court has recognized, Burger's entire defense, as presented by Leaphart at both of Burger's trials, was that Stevens was the far more culpable party and that he had killed Mr. Honeycutt only at Stevens' direction. Stevens' sole defense at his trials was the exact opposite, i.e., that he did not know that Burger was going to drive the car into the pond. *See Stevens* v. *State*, 242 Ga. 28, 247 S.E.2d 838, 840 (1978) (Stevens' confession stated that he had advised against killing the driver and that he had not known that Burger was going to drive the car into the pond); *Stevens* v. *State*, 245 Ga. 583, 266 S.E.2d 194 (1980) (the sole mitigating evidence introduced by Stevens at his trial was that Burger had killed the victim). The District Court acknowledged that Leaphart did employ a strategy adverse to Stevens' interests when he emphasized Stevens' greater culpability. 753 F.2d at 939; J.A. 177; *see also, Burger* v. *Zant*, 718 F.2d 979, 989 (11th Cir. 1983) (Johnson, J. dissenting) ("Burger's interests were drastically adverse to those of Stevens"). J.A. 149.

The Respondent asserts that the interests of Petitioner and his co-indictee were not adverse because both Stevens and Burger chose a common defense, i.e., to "put the state to its proof." Respondent's brief at 20-21. This contention is ludicrous. Leaphart testified, and the trial records confirm, that the only semblance of a theory of defense put on by Leaphart was that Stevens was the far more culpable party in the crime. The theory of defense at Stevens' trial took the opposite approach. The Respondent's assertion also totally ignores the reality of a capital trial with more than one defendant. In any such case there will always be differences in culpability that may well make the difference between life and death. *See, e.g.*,

Fleming v. *State*, 246 Ga. 90, 270 S.E.2d 185, 188 (1980) (court acknowledged that multiple counsel is necessary in a capital case because "when the death penalty is sought . . . even a slight conflict, irrelevant to guilt or innocence, may be important in the sentencing phase").[6]

The record evidence, therefore, amply demonstrates that Leaphart actively represented the conflicting interests of Burger and his co-indictee Stevens and thus that an actual conflict of interest existed. Pursuant to this Court's holdings in *Cuyler* v. *Sullivan*, *supra*, and *Holloway* v. *Arkansas*, 435 U.S. 475 (1978), Petitioner is entitled to a new trial where he will be afforded his constitutional right to conflict free representation.

Even though no showing of prejudice is required once an actual conflict of interest is demonstrated, *Cuyler*, 446 U.S. at 349, Leaphart took several actions adverse to Burger's best interests.[7] First he never offered Burger's testimony against Stevens in exchange for a sentence of

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[6] The Georgia Supreme Court in *Fleming*, adopted a rule that there could not be multiple representation in a capital case. The rule applies with equal force to representation by a single attorney or members of the same law firm. 270 S.E.2d at 180 (defendant "must be provided with separate and independent counsel"). However, *Fleming* was decided after Petitioner's second sentence of death was affirmed by the state supreme court.

[7] This Court recognized in *Cuyler* that in the case of an actual conflict of interest, prejudice is difficult to demonstrate. 446 U.S. at 349; *see also*, *Holloway*, *supra*, 435 U.S. at 490-91 ("[I]n a case of joint representation . . . the evil — it bears repeating — is in what the advocate finds himself compelled to refrain from doing . . . [It is] difficult to judge intelligently the impact of a conflict on the attorney's representation of a client. And to assess the impact of a conflict of interests on the attorney or the attorney's options, tactics, and decisions would be virtually impossible.").

less than death. J.A. 52; FHT 38-39. *See also* Petitioner's principal brief at pp. 15-16. Additionally, he did not argue Burger's lesser culpability on direct appeal to the Georgia Supreme Court after Petitioner was sentenced to death the second time.[8]

At both trials, but especially at Petitioner's second trial, the very fact of Leaphart's and Smith's dual representation could easily have been extremely prejudicial to Burger. Leaphart testified that it was general knowledge in the community that Burger and Stevens were being retried for a crime that they had previously been found guilty of and sentenced to death. FHT 42-43; J.A. 56. He was also confident that potential jurors were aware of the

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[8] The Respondent maintains that such an argument would have been frivolous. Respondent's brief at 24. This statement demonstrates the Respondent's cynicism regarding the usefulness of the Georgia Supreme Court's proportionality review. However, this Court determined in *Gregg* v. *Georgia*, 428 U.S. 153, 206 (1976) that the Georgia Supreme Court's affirmative duty to review all death sentences, i.e., proportionality review, was a major component of the Georgia death penalty scheme that guarded against arbitrariness in capital sentencing. At the time of Petitioner's second direct appeal, the Georgia Supreme Court had not decided whether the death penalty could be imposed on one under eighteen. The issue of whether it was constitutionally permissible to execute minors was perculating in the courts then and it has never been decided by this Court although the issue was before this Court in *Eddings* v. *Oklahoma*, 455 U.S. 104 (1982) two years after Burger's appeal. Furthermore, it would seem self evident that the significantly lesser culpability of a seventeen year old defendant, who due to a mental impairment is functioning at the level of a twelve year old, is exactly the type of situation that proportionality review is meant to, at the very least, take into consideration in determining whether the death penalty is appropriate. Certainly briefing and arguing the issues of Petitioner's lesser culpability as well as his age and mental condition would not have been frivolous.

prior convictions and sentences. FHT 43; J.A. 56. The voir dire at the second trial confirms this. At least[9] twenty-three of the forty-eight potential jurors were aware of the facts of the case. However, Leaphart did, for all practical purposes, no voir dire to determine if people were aware of who had represented the two co-indictees at the first trial (in order to determine if the potential jurors knew that he and his law partner had represented Burger and Stevens) or whether potential jurors knew the theories on which the previous cases were tried (in order to find out whether anyone knew that he and his law partner had tried the cases on inherently conflicting theories). This was of critical importance in the small rural community in which Petitioner twice received the death penalty; a community in which according to Leaphart "[e]verybody knows what everybody is doing generally" and when the case was "a well publicized event" and "[e]verybody knew about it." FHT 41; J.A. 54-55.[10] The above are the type of inquires that a counsel with undivided loyalties would certainly have made for the obvious reasons that if any juror were aware of any of the above facts, Petitioner's trial would become in that juror's

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[9] In all likelihood, more than twenty-three of the forty-eight potential jurors qualified knew the details of the crime and the first trial. In the first panel of twelve there were affirmative responses to Leaphart's inquiry of whether any juror had any knowledge of the facts of the crime. However, the record does not reflect the number of affirmative responses. R.Tr. 22. In the second panel, of twelve, nine jurors had knowledge. R.Tr. 34. In the third panel of twelve, six were aware of the facts of the crime; and, among the fourth panel of twelve, eight responded affirmatively. R.Tr. 48.

[10] In fact, Leaphart testified that one of the primary reasons he did not move for a change of venue was because he believed that if the motion were unsuccessful jurors would have learned that he moved for a change of venue and would have held it against the defense. FHT 41; J.A. 55.

mind merely a charade and a game with the purpose being to blame whomever was not on trial.[11]

Because Leaphart labored under an actual conflict of interest that adversely affected his performance Petitioner is entitled to a new trial.

B. Leaphart's Decision Not To Present Any Mitigating Evidence At The Penalty Phase Of Petitioner's Trial Was Based Upon An Inadequate Investigation And Constituted Ineffective Assistance Of Counsel Under The Facts Of This Case.

1. The scope of Leaphart's investigation.

As has been the case throughout these proceedings, the Respondent has again misstated the nature of the record evidence.[12] The Respondent maintains that Leaphart

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[11] At Petitioner's first trial, the jury was also selected from four panels of twelve potential jurors. Leaphart did not ask the first two panels whether they had read or heard about the facts of the crime. He did ask the third panel if anyone had read about the case. Some jurors responded affirmatively but the record does not reflect how many did so. Tr. 43. In the last panel, three of twelve stated that they knew the facts of the crime. Tr. 49-50.

[12] One of the most glaring examples of this is the Respondent's continued assertion that Burger opened the trunk of the car, asked Honeycutt if he was alright and then closed the trunk and then immediately drove the car into the pond. The Respondent attempts to portray the events in this manner in order to show that Burger acted in a sadistic manner. However, the record clearly demonstrates that Burger asked Honeycutt if he was alright while Stevens was off in the bushes hiding the C.B. radio. *See* J.A. 18; Re. Tr. 207 (transcript from second trial). It was only after Stevens came back that Burger learned that Stevens intended to kill Honeycutt. *See* Burger's confession (introduced at both trials as State's Exhibit 26) following Re. Tr. 259 at page three of four pages of the confession; *see also* Tr. 79 (where even the District Attorney maintained in his opening argument that the two only decided to kill Honeycutt after Stevens came

made a thorough investigation into possible mitigating evidence and that he conducted "numerous interviews with Petitioner, Petitioner's mother, [and] an attorney who had befriended Petitioner and his mother." Respondent's brief at 26. Leaphart's testimony as to his investigation speaks for itself and is reproduced below:

> Q. When is the first time you talked to any of his family?
>
> A. Whenever they came to town.
>
> Q. Did you call and tell them about the trial?
>
> A. No, I don't think I did.
>
> Q. Well, the time that the trial was going to happen the first time, you had talked to the family before the — before the supposed —
>
> A. I can't remember. I think I talked with his mother, at some point in time.
>
> Q. Before that.
>
> A. Before the trial?
>
> Q. Before she came to town. You had talked to her.
>
> A. I may have talked to her on the phone. I can't remember.
>
> Q. Did you ask her anything about his background?
>
> A. Yes, I think we discussed it.
>
> Q. Did you explain to her what the penalty phase of the trial was about, and what evidence could be presented then?

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back from disposing of the radio). Thus at the time that Burger asked the victim if he was alright he thought that he and Stevens were going to leave the car and the victim in the woods while they escaped.

A. I don't think I went into that with her.

Q. Did you explain to any member of his family?

A. She was the only member of the family that I remember being involved with.[13]

(FHT 36; J.A. 50)

* * * *

Q. How many times did you talk to Mr. Burger before the trial and for what period of time?

A. I can't remember that. I don't know. A number of times.

Q. How long is the longest time you ever talked to him?

A. Probably about an hour.

Q. On how many occasions?

A. I can't remember that. About maybe a half a dozen times.

Q. And, who other than his mother when she came to town did you talk to?

A. I think that was all I talked to, his mother. You know, in the family.

Q. Did you make any attempt to talk to the other people that he had lived with during his life?

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[13] Petitioner's mother testified that she learned of the trial only a few days before the first trial from a relative. FHT 75; J.A. 83. She went to Georgia and sought out Leaphart who had never contacted her. She further testified that he did not inquire into any potential witnesses and that he never explained to her the nature of the admissible evidence at the penalty phase. FHT 75-76; J.A. 84. She testified that she spoke with him for possibly a half hour before going to trial. FHT 76; J.A. 84.

A. I couldn't — didn't know who they were. . .

(FHT 37; J.A. 51)

* * * *

Q. Did you interview any witnesses other than on the witnesses for the State, the State's list of witnesses, or potential witnesses?

A. I interviewed, I had of course, the psychologist that I interviewed and discussed the case. And, of course, discussed it with his mother. As far as going out and trying to find any additional witnesses, which would help him in the sentencing stage, I did not have any knowledge of any witnesses that — potential witnesses that I thought would have benefitted him. Had I known or had knowledge of any, I would — certainly would have used them.

(FHT 43-44; J.A. 57)

* * * *

Therefore, even crediting Leaphart's testimony, he spoke with Petitioner at most six times for a maximum of one hour each time. This six hours included, of course, inquiries regarding the guilt/innocence phase of the case and the circumstances and details of the crime itself. A review of the federal evidentiary hearing transcript reveals that this was Leaphart's primary concern. He spoke with Petitioner's mother immediately prior to the first trial on one or possibly a few more occasions but he never explained the nature or scope of admissible evidence at the penalty phase. He spoke with an attorney on one occasion who had been Petitioner's "big brother" in Indiana. But Leaphart did not pursue that avenue any farther when he learned that the attorney was a black person. FHT 45; J.A. 57-58. According to Leaphart's

testimony, he did no investigation into Burger's background in Indiana, where Burger had spent most of his life, except to read a psychologist's report provided by Petitioner's mother. FHT 35-36; J.A. 50. He made no attempt to talk to any person other than Petitioner's mother that he had lived with during his life, even though Burger had lived for extended periods of time with others. FHT 37; J.A. 51. He never went or sent any investigator to any town that Burger had lived in to seek out potential mitigation witnesses. FHT 54; J.A. 65. Contrary to the Respondent's assertions, there is no evidence that Leaphart ever attempted to locate Petitioner's father.[14]

Of special significance to a proper resolution of this case is that Leaphart did absolutely no investigation between the first and second trial. FHT 43; J.A. 56. Petitioner's first sentence of death was vacated by the Georgia Supreme Court on September 5, 1978. The case was remanded for a new trial solely on the issue of punishment, i.e., whether Burger would be sentenced to life imprisonment or death. Despite the limited scope of the second trial, Leaphart made absolutely no effort to develop and prepare a mitigation case in the ten months between the reversal of Petitioner's sentence and his second trial, which began on July 16, 1979. Leaphart's testimony was that he only reviewed the file and decided to try the case the same way as he did the first time. FHT 43-44; J.A. 56-57. Under the facts of this case "Leaphart failed to conduct a reasonable substantial investigation into avail-

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[14] On cross-examination at the evidentiary hearing, Mr. Hill asked Leaphart the leading question whether he was ever able to locate Burger's father. Leaphart said no. FHT 64; J.A. 74.

able mitigating evidence" *Burger* v. *Zant*, 718 F.2d at 992 (Johnson, J. dissenting).[15] J.A. 154.

Nor can this evidence be said to have been "lukewarm" or "low quality" mitigating evidence. Any review of the testimony of the Petitioner's mother at the federal evidentiary hearing (beginning at FHT 74; J.A. 83) will reveal that her testimony regarding the abuse suffered by Burger during his formative years is not lukewarm. The District Court recognized that Petitioner's mother provided a "more compelling explanation of Burger's background" and that present counsel "were successful in finding other witnesses who could paint a tragic childhood background" 753 F.2d at 938.[16] J.A. 173. Leaphart, however, had no knowledge of most of this evidence and failed to comprehend the significance of what little he did know.

This is precisely the type of evidence which this Court acknowledged in *Eddings* v. *Oklahoma*, 455 U.S. 104,

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[15] Leaphart's testimony that Burger did not provide him with the names of mitigation witnesses should be discounted. Leaphart knew that Burger had an 82 I.Q. and functioned at the level of a twelve year old. In fact at one point, Leaphart was asked if Burger cooperated with him. Leaphart answered "[h]e was as cooperative as he could be." FHT 65; J.A. 75. As Petitioner maintained in his principal brief at p. 29, he does not believe that this Court is prepared to say that a failure to investigate mitigating evidence on the basis of limited discussions with a mentally impaired adolescent constitutes adequate representation. Therefore, any decision to rely solely on Burger to provide witnesses was unreasonable in this case.

[16] Petitioner also introduced affidavits from several additional witnesses from Indiana into evidence at the federal evidentiary hearing which corroborate Burger's mother's compelling description of his formative years and that they would have been willing and able to so testify if they had been contacted by Leaphart.

114-116 (1982) would warrant a sentence less than the death penalty.

2. Leaphart's failure to comprehend the purpose of mitigation evidence.

In fact, as the following colloquy demonstrates, Leaphart's testimony can be fairly read to state that he believed that no matter what evidence regarding Petitioner's individualized characteristics was available it should not have been presented and he would not have presented it in this case.

> Q. Did you ever consider using the psychologist for other things, other than that?
>
> A. I could have — if he had been of the opinion, you know, question of sanity, I could have used that instance, but he was not of that opinion. I did not see the benefit of going out and trying to find the sociologist, or psychologist to use in that particular trial in that particular place, because I did not think that that would be effective. Not the way to do it. I felt the way to try that case was to take the evidence that was there and try to minimize Mr. Burger's participation in the crime. It was my opinion that that was the best way to try this case and that to try to drag in these other people, or some witnesses who may have known something, some little something about him and that would have said something like he was a good boy and went to church, I couldn't find any of those to start with. But, even so, I would not have used that type of witness because I did not think that that was the way to handle that case. I felt that case should have been tried on the facts and make the District Attorney — I say make him, use whatever rules of evidence to exclude those harmful facts, and then use the — my opinion in representing Bur-

> ger was then use those facts to show that he was just there and was not entitled to be treated in the same manner as the person who was — who was the main actor in the thing. That he was a secondary, he was in a secondary position. Since there were two punishments in that particular situation, that he should be given the lesser of the two. I think that's the way that case should have been tried, and that's the way I tried it. And, I don't know of — today, if I had to go back and try it again I would do it in the same manner — I say in the same manner, much the same manner, using the same thing and hope I got a different jury. That's all. And, that's it. FHT 51-52; J.A. 63-64.

Leaphart's testimony and the brief of the Respondent indicate a fundamental misunderstanding of the purpose of introducing mitigation evidence at the penalty phase of a capital trial. In their collective view, evidence in mitigation should not be introduced unless it presents a defendant in an altogether positive light and indicates that he was a perfect citizen (a "good boy" that "went to church") before the offense for which s/he now stands before the sentencing body to have his or her fate determined. Of course, that is rarely if ever the case.

The purpose of the mitigation case is to give the sentencer information regarding the "compassionate or mitigating factors stemming from the diverse frailties of humankind," *Woodson* v. *North Carolina*, 428 U.S. 280, 304 (1976) which will encourage it to impose a sentence less than death. Evidence about the defendant's background and character is critical "because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *California* v.

Brown, ___ U.S. ___, 55 U.S.L.W. 4155, 4157 (January 27, 1987) (O'Connor, J. concurring).

Leaphart did not even present what mitigating evidence he did know of, i.e., that Petitioner had no prior criminal record of any kind and that due to a mental impairment he functioned at the level of a twelve year old.[17] In a case such as this the failure to adequately investigate and present evidence regarding the horrible background and the physical and emotional abuse suffered by this Petitioner makes the resulting sentence of death unreliable. The death penalty in this case could not

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[17] Leaphart testified that he did not use the psychologist because he testified at the Jackson-Denno hearing that Burger was a sociopath with a psychopathic personality and that a sociopath was crazy and did not belong in an insane asylum. Therefore, Leaphart believed this evidence which would come out in cross-examination would be harmful to Burger. J.A. 62. A review of the psychologist's testimony indicates that Leaphart misunderstood what the psychologist told him. This is not surprising since Dr. O'Haire only saw Burger on one occasion; the Saturday before Petitioner's first trial began the two days later, on Monday. Tr. 244. Thus, at best, Leaphart would have had only minimal time to consult with Dr. O'Haire. After testifying that Petitioner had an 82 I.Q. and due to a mental impairment and likely brain damage he functioned at the level of a twelve year old (Tr. 244, 248), Dr. O'Haire further testified that Burger lacked the ability to learn from previous experiences and that he had severe lack of feelings of self-worth due to his inability to deal with peers or family members. Tr. 247. Dr. O'Haire did testify that Petitioner needed to be confined. However, his testimony also indicates that he believed treatment would have been beneficial and suggested as a suitable place "the full security prison" in Milledgeville, Georgia. Tr. 259-260. Milledgeville is the psychiatric prison in Georgia. Therefore, while the doctor's testimony was not wholly positive it would have informed the jury of Burger's mental deficiencies. his lack of feelings of self worth and ability to reason normally. In the context of the circumstances of this case, it may well have led to a sentence less than death.

have "reflected a reasoned *moral* response to the defendant's background, character and crime . . ." *California* v. *Brown*, *supra* (O'Connor, J. concurring).

The Respondent's position in this case, examined closely, is that any time an attorney attempts to justify egregious errors after the fact by utilizing the "talismanic" words "judgment," "choice," or "strategic decision" that attorney can not be found to be ineffective. Petitioner does not believe that was this Court's intent in *Strickland* v. *Washington*, *supra*.

II. THE INSTRUCTION ON MALICE AND INTENT WAS CONSTITUTIONALLY FLAWED

Respondent points to what he believes to be curative instructions in the trial court's charge to the jury. Petitioner would note that virtually all the phrases pointed to by the Respondent were also present in the charge given in *Francis* v. *Franklin*, 472 U.S. ____, 105 S.Ct. 1965 (1985) and rejected by this Court as being insufficient to cure the constitutional deficiencies in that case. *Id.* at 1974-76. Likewise, the language pointed to by the Respondent does not cure the error in the charge given at Burger's trial.

CONCLUSION

For the foregoing reasons, and for reasons previously presented, Petitioner submits that this Court should reverse the judgment of the Court of Appeals.

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